

Appeal from a decision of the Phoenix District Office, Bureau of Land Management, cancelling a sale of public lands, rejecting bids submitted at the sale, and refunding deposits. A-21946 through A-21951.

Affirmed.

1. Accounts: Refunds--Federal Land Policy and Management Act of 1976:  
Sales--Payments: Refunds--Public Lands: Disposals of: Generally--  
Public Sales: Cancellation

It was proper for BLM to cancel a sale of public lands following acceptance of high bids when the sale was found to be contrary to an injunction entered in National Wildlife Federation v. Burford, 676 F. Supp. 280 (D.D.C. 1986), aff'd, 835 F.2d 305 (D.C. Cir. 1987). In such case a refund of deposits submitted with the high bids was proper. However, in the absence of express statutory authority, no interest on the funds deposited may be paid by BLM .

APPEARANCES: Gordon L. Hardy, Phoenix, Arizona, for appellants; Fritz L. Goreham, Esq., Field Solicitor, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Gordon L. Hardy has appealed from a decision of the Phoenix District Manager, Bureau of Land Management (BLM), dated May 19, 1987, cancelling a sale of public lands to Hardy and other unnamed individuals. <sup>1/</sup> Hardy had submitted bids for six parcels of public land described in a notice of competitive sale published in the Federal Register at 51 FR 19615 (May 30, 1986). By notice of November 20, 1986, Hardy was informed by BLM that his bids were the highest bids for each of the six parcels, that the bids had

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<sup>1/</sup> It appears the winning bids were submitted by Hardy on behalf of himself and on behalf of other parties in interest. The notice of appeal does not identify by name other parties to the appeal, but it is clear that Hardy speaks not only for himself but also for other parties in interest. For convenience, we shall refer to Hardy as if he were the sole appellant.

been accepted, that his deposits of 20 percent of the bid amounts had been accepted, and that the remainder of the purchase price for each parcel was due within 180 days.

Prior to the end of the 180-day period, Hardy was informed by BLM that the sales could not be completed. BLM's decision of May 19, 1987, sets forth the basis for its action:

On November 19, 1986, you were declared the successful bidder for parcel numbers A-21946, A-21947, A-21948, A-21949, A-21950, and A-21951. Unfortunately the parcels that you were named successful bidder for cannot be sold at this time due to a court injunction that was granted on February 10, 1986. It had not been determined that the parcels you bid on were encumbered by the injunction until after your bid had been accepted and your payments taken. To continue with the sale at this time would be in contempt of court and the Bureau of Land Management has no recourse but to refund the payments you have made, and cancel the sale.

Having been so informed, Hardy refrained from paying the balance of the purchase price for the six parcels.

In his statement of reasons, Hardy states that he has suffered considerable loss by BLM's decision. Among these losses, appellant states, are the properties themselves, 2/ engineering and surveying fees totalling \$4,820, and interest on his deposits. Hardy observes that it seems only appropriate and fair that he be allowed to go ahead with the purchases at the agreed-upon price whenever the court injunction is removed.

The injunction that BLM and Hardy refer to is one issued by Judge Pratt in National Wildlife Federation v. Burford, 676 F. Supp. 280 (D.D.C. 1986), aff'd, 835 F.2d 305 (D.C. Cir. 1987). This order enjoined BLM from taking any action inconsistent with the specific restrictions of a withdrawal or classification in effect on January 1, 1981, including, but not limited to, the sale, exchange, or disposal of lands. 51 FR 5809 (Feb. 18, 1986).

The record reveals that on January 1, 1981, lands sought by appellant were subject to a withdrawal from public entry under a first-form reclamation withdrawal, pursuant to Secretarial Order dated March 27, 1943. 8 FR 4354 (Apr. 6, 1943). This withdrawal was revoked by Public Land Order No. 6353, which opened the subject lands to surface entry. 48 FR 9007 (Mar. 3, 1983).

[1] BLM's acceptance of bids for the six parcels at issue was contrary to Judge Pratt's order, as BLM belatedly recognized. Having acted in violation of this order, BLM correctly cancelled the sales in progress.

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2/ These tracts of land are located in sec. 15, T. 8 N., R. 5 W., Gila and Salt River Meridian, and have been serialized as A-21946 through A-21951.

Until the acceptance of the offer and payment of the purchase prices, Hardy had no contractual or other rights against the United States, and no action had been taken which created any contractual or other obligations of the United States. 43 CFR 2711.3-1(g), George Henke, 87 IBLA 81, 84 n.3 (1985). In the absence of a contract right, Hardy assumed the risk that any expenditures he made for engineering and survey of the subject lands might be fruitless. See also 43 CFR 1810.3.

BLM properly advised that it had no recourse but to refund appellant's payments and cancel the sale. In the absence of express statutory authority, interest cannot be recovered against the United States upon unpaid accounts or claims. Amoco Production Co., 101 IBLA 152, 153 (1988), and cases cited therein. No such authority is offered by appellant.

By order of November 4, 1988, Judge Pratt vacated his preliminary injunction and found that the National Wildlife Federation lacked standing to sue and, accordingly, subject matter jurisdiction was lacking. National Wildlife Federation v. Burford, No. 85-2238 (D.D.C. Nov. 4, 1988) (memorandum opinion and order). On November 14, 1988, National Wildlife Federation filed a notice of appeal from this decision and moved for reinstatement of the preliminary injunction.

If Judge Pratt's order of November 4, 1988, is not substantially changed, BLM may wish to re-offer the parcels at issue for sale under 43 CFR 2710.0-6. Because 43 CFR 2710.0-6(f) requires that lands be sold for not less than fair market value, a reappraisal of the parcels may be necessary. Appellant did not lock in the purchase price by BLM's having advised him of its acceptance of the bids. 43 CFR 2711.3-1(g).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Phoenix District Manager is affirmed.

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R. W. Mullen  
Administrative Judge

I concur:

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C. Randall Grant, Jr.  
Administrative Judge